



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

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10 **MEETING MINUTES**

11 **PLANNING BOARD-JUNE 21, 2021, 5:30 P.M.**

12 **LOCATION: PITTS CENTER-5377 N VIRGINIA DARE TRAIL, SOUTHERN SHORES, NC 27949**

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15 **I. CALL TO ORDER:**

16 Chairperson Andy Ward called the meeting to order at 5:30 pm. Planning Board Members Lynda
17 Burek, Ed Lawler, Robert McClendon, Tony DiBernardo (Vice Chairperson), Andy Ward
18 (Chairperson), Deputy Town Manager/Planning Director Wes Haskett, and Town Clerk Sheila
19 Kane were present.

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21 **II. PLEDGE OF ALLEGIANCE:**

22 Chairperson Ward led the Pledge of Allegiance.

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24 **III. APPROVAL OF MINUTES**

25 Vice Chairperson DiBernardo motioned to approve the April 19, 2021 as corrected. Planning
26 Board Member Burek seconded the motion. The motion passed unanimously (5-0).

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28 **IV. APPROVAL OF AGENDA:**

29 Vice Chairperson DiBernardo motioned to approve the agenda. Planning Board Member Burek
30 seconded the motion. The motion passed unanimously (5-0).

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32 **V. PUBLIC COMMENT:**

33 None

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35 **VI. OLD BUSINESS**

36 **ZTA-21-06 TEMPORARY FAMILY HEALTH CARE STRUCTURES**

37 Amendment of the Town Zoning Ordinance by amending Section 36-168, Temporary Uses

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39 The proposed amendments to Section 36-168, Temporary Uses are a result of State Law
40 changes from S.L. 2014-94 which establishes temporary family health care structures as
41 permitted accessory uses in any single-family residential zoning district on lots zoned for
42 single-family detached dwellings. The Planning Board recommended approval of Part II of
43 ZTA-21-02 with amendments at the April 19, 2021 Town Council meeting. As requested by
44 Town Staff, the Town Council tabled its consideration of Part II of ZTA-21-02 at the May 4,
45 2021 Town Council meeting so that the Town Attorney could review and comment on the
46 proposed language. Following his review, the Town Attorney provided the following written
47 comments as well as revised language for consideration:

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I have reviewed the proposed Temporary Health Care Structures ZTA and attached a modified version. In general, the version prepared by Code Wright was compliant. However, the modifications that were made did not make sense throughout the proposed ordinance. So, rather than pick and choose and rearrange the minor, but unnecessary complicated changes, I prepared an amendment using the statutory language as its base. That provides for little to no doubt that the ordinance amendment is compliant with the enabling authority. Additionally, I reviewed the changes suggested by the Planning Board, and the ones that made sense or matched the language of the enabling authority were included. There were four:

- 1. Septic Wastewater Connection Requirement – Covered by Sec. 36-168(5)(f).*

- 2. Caregiver to be a licensed health care professional – This seems unnecessary and likely not what the Town would prefer. Generally, the rest of the provisions require the related caregiver or a legal guardian to own the property on which the structure will be located. If this provision was included, a property owned by a health care professional who was not related to or a guardian of an impaired person would be able to have a structure on their property. That seems to be more of a commercial use than what is intended by family members and guardians taking care of an impaired person on their own property. If the Town wants this situation to occur, it will take some substantial rewording, and it would not be possible to require all caregivers to be a health care professional under the enabling authority.*

- 3. Meeting all State and Local requirements -- Covered by Sec. 36-168(5)(f).*

- 4. Meeting Mobile Home requirements – This requirement would be beyond the enabling authority which allows only for limitations associated with accessory structures to be applicable to these structures.*

Chairperson Ward stated the Town Attorney has basically taken the N.C.G.S. 160D.915 and placed it in a zoning text amendment (ZTA). This is a state law which supersedes what we as a Town can do. The board needs to discuss how it wants to enter making suggestions, approving, or not approving the text amendment before us.

Planning Director Haskett reviewed a list of requirements for *Temporary Family Health Care Structures*. The list reads as follows:

- Zoning requirements:
 - Yard (setback) requirements: 25 ft. front and rear, 15 ft. sides.

- Flood Requirements:
 - Must meet the Regulatory Flood Protection Elevation (RFPE).

- State Building Code.
 - Including all electrical, plumbing, and mechanical.
 - Tied down/anchored (Building Inspector suggested helical anchors, plans certified by Engineer).

- 96 • N.C.G.S 143-139.1. (Certification of manufactured buildings, structures or components by
97 recognized independent testing laboratory; minimum standards for modular homes.):
98 -Must be labeled with a North Carolina Modular Construction Validating Stamp.
99 -In order to obtain the North Carolina Modular Construction Validating Stamp, must meet
100 the NC Modular Construction Appearance Requirements:
101 -Roof pitch: For homes with a single predominant roofline, the pitch of the roof
102 shall be no less than five feet rise for every 12 feet of run.
103 -Eave projection: The eave projections of the roof shall be no less than 10 inches,
104 which may not include a gutter around the perimeter of the home, unless the
105 roof pitch is 8/12 or greater.
106 -Exterior wall: The minimum height of the exterior wall shall be at least seven feet
107 six inches for the first story.
108 -Siding and roofing materials: The materials and texture for the exterior materials
109 shall be compatible in composition, appearance, and durability to the exterior
110 materials commonly used in standard residential construction

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112 Chairperson Ward stated it will be the impaired person living in the temporary housing, not the
113 caregiver, that was originally thought.

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115 Vice Chairperson DiBernardo stated the chances of this coming up in Southern Shores is minimal
116 and it is full of legal holes.

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118 Chairperson Ward stated this temporary structure must comply with the flood ordinance (a
119 minimum of 8 feet above sea level), which puts this structure on a potentially temporary
120 foundation to get it up and above the flood zone. He stated our hands are tied and we will have
121 to comply if we must. He questioned how something like this could work in our area, given the
122 constraints of wind and water.

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124 Planning Director Haskett stated according to the Town Attorney we must stick within what the
125 enabling statutes allow.

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127 Chairperson Ward stated he would recommend that Council is given the same list of
128 requirements and conditions we received and that we understand must be met to even venture
129 into this.

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131 Hearing no further discussion, **MOTION** made by Chairperson Ward to approve ZTA-21-06 as
132 written by the Town Attorney and the State of NC to recommend approval by Town Council,
133 Seconded by Vice Chairperson DiBernardo. Motion passed unanimously (5-0).

134 135 136 VII. NEW BUSINESS

137 TCA-21-05 N.C.G.S. 160D UPDATE

138 **Amendment of the Town Code by adding Section 1-12, Conflicts with State Law Authority** 139 **and Procedures**

140 In 2019, the N.C. General Assembly enacted North Carolina General Statutes Chapter 160D, Local
141 Planning and Development Regulation, which consolidated and clarified former Chapters 160A
142 and 153A which addressed development regulations for Municipalities and Counties. The
143 Chapter became effective January 1, 2021 with the requirement that all Municipalities and

144 Counties update their ordinances to be compliant with it by July 1, 2021. Due to the Town Code
145 Update project, Town Staff chose to postpone amending the Town Code to be compliant with
146 Chapter 160D until the amendments from the Town Code Update project are complete.

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148 As a result of that postponement, the Town Attorney has prepared language in the form of a
149 Town Code Amendment (TCA) that clarifies that the North Carolina General Statutes (in
150 particular Chapter 160D) must be satisfied whenever the Town Code conflicts with, contradicts
151 or is otherwise inconsistent with the North Carolina General Statutes. The intent of the proposed
152 language is to clarify that although the Town has not yet amended the Town Code to be
153 compliant with Chapter 160D, its provisions will still be followed when applicable.

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155 Chairperson Ward called for comment or issue with the language in the proposed town code
156 amendment.

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158 Hearing no discussion, **MOTION** made by Vice Chairperson DiBernardo to approve ZTA-21-05 as
159 written, Seconded by Planning Board Member Lawler. Motion passed unanimously (5-0).

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162 **ZTA-21-07, LOT ACCESS REQUIREMENTS**

163 **Amendment of the Town Zoning Ordinance by amending Section 36-95, Lot Access**
164 **Requirements**

165 At the May 17, 2021 Planning Board meeting, the Board recommended conditional approval of
166 PSP-21-01, a preliminary subdivision plat to subdivide the property located at 279 Hillcrest Dr. At
167 the June 1, 2021 Town Council meeting, the Town Council conditionally approved SPA-21-01 and
168 instructed the Planning Board to recommend a Town Code amendment that would eliminate the
169 possibility of subdividing property that does not have frontage on a public or private street. The
170 proposed amendment to Section 36-95 is suggested by Town Staff which removes the possibility
171 of creating a new lot or lots that only have frontage on an easement.

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173 Chairperson Ward stated one simple idea is to strike the word “easement” in line one. It solves
174 what the Town Council is wrestling with and is the simplest solution. This would eliminate the
175 ability to subdivide, as there are some large tracks of land in that area. This owner at 279
176 Hillcrest Drive received approval because we did not have anything in place to block the
177 subdividing. This was not the intent of those great big lots.

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179 Planning Director Haskett stated he would believe striking the word “easement” in line one
180 would address Council’s concern.

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182 Planning Director Haskett state at the last Council meeting, Council ended up granting approval
183 of the subdivision application. It was determined that the Town cannot require setbacks off of
184 the easement, it has to come from the property line based on the zoning definition of yard, front
185 or side. The side setback came from that property line, not the easement line. In the approved
186 submitted application, the setback will be in the easement, about 15 feet into it.

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188 Chairperson Ward stated they have a hard surface easement, and they could build a house right
189 up to the edge of the pavement. Planning Director Haskett stated in this case the house is
190 already built and only one house allowed per property, but if they were to tear it down the new
191 structure could certainly build up to the pavement.

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Chairperson Ward asked Planning Director Haskett if the Town Attorney has looked at the proposed language. Mr. Haskett stated he had not.

Chairperson Ward stated he could recommend ZTA-21-07 with a Town Attorney review and moved forward with that **MOTION**, Seconded by Planning Board Member Burek. The motion passed unanimously (5-0).

VIII. Public Comment

None

IX. Planning Board Member Comments

Vice Chairperson DiBernardo stated he would like the board to consider requesting approval from the Town Council to address Chapter 26 of the Municipal Code. Chapter 26 addresses trash collection and there are minor changes that could make a big difference in the long run, as far as cleaner streets. He stated due to numerous colored cans, it would be beneficial to require the cans to be labeled, either trash or recycle. It is a very simple thing, and some compliance is better than no compliance. Renters have no idea what the color cans mean and simply labeling the cans would help eliminate the confusion.

Chairperson Ward stated it would also benefit by adding "3 feet apart" on the cans in order to allow the truck to properly service the cans. He asked Vice Chairperson DiBernardo to represent the Planning Board at the July 6th Council meeting with the request to address Chapter 26. All Planning Board members agreed by **Consensus**.

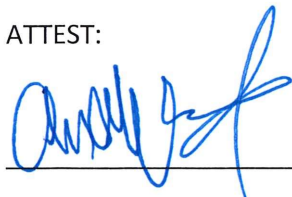
X. Announcements

Planning Director Wes Haskett stated the next meeting is July 19th and the agenda will consist of a site plan review, the Marketplace Shopping Center is requesting to make some changes to their storefronts and possibly more text amendments.

XI. Adjourn

MOTION made by Vice Chairperson DiBernardo to adjourn, Seconded by Chairperson Ward. Motion passed unanimously (5-0). The time was 6:25 P.M.

ATTEST:



Andy Ward, Chairperson



Respectfully submitted,



Sheila Kane, Town Clerk